No. 90-906

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,
Petitioners,

v.

CITIZENS FOR THE ABATEMENT OF
AIRCRAFT NOISE, INC., *et al.*,
Respondents,

UNITED STATES OF AMERICA,
Intervenor.

**On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit**

REPLY BRIEF FOR THE PETITIONERS

Of Counsel:
GREGORY WOLFE
EDWARD S. FAGGEN
METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY
44 Canal Center Plaza
Alexandria, VA 22314
(703) 739-8740

WILLIAM T. COLEMAN, JR.
Counsel of Record
DONALD T. BLISS
DEBRA A. VALENTINE
NANCY E. MCFADDEN
O'MELVENY & MYERS
555 13th Street, N.W.
Suite 500 West
Washington, D.C. 20004
(202) 383-5325

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C 20001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-906

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,
Petitioners,

v.

CITIZENS FOR THE ABATEMENT OF
AIRCRAFT NOISE, INC., *et al.*,
Respondents,

UNITED STATES OF AMERICA,
Intervenor.

**On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit**

REPLY BRIEF FOR THE PETITIONERS

A. THE BOARD OF REVIEW IS EMPOWERED BY STATE LAW.

1. Respondents in essence urge this Court to adopt an unprecedented theory of origination under which the constitutionality of a nonfederal board established under state law would hinge on whether the state or the federal government originated the idea of how that entity would be structured. Respondents concede that a nonfederal airports authority could conceive of and establish pursuant to state law a Board of Review with disapproval powers and appoint Members of Congress to serve thereon without abridging the Constitution. Brief for Respondents

("Resp. Br.") at 28. The constitutional error in this case, they allege, arises because the idea for the Board of Review, including its composition and powers, originated in Congress and not in the states. *Id.* at 29. But neither the separation of powers doctrine nor any of the myriad other constitutional provisions that respondents invoke turns on who originates the idea for a particular action or entity. If the states have the power to create such a Board on their own, the Constitution does not prohibit their voluntary decision to embrace that idea merely because it originates in Congress. *Cf. Steward Mach. Co. v. Davis*, 301 U.S. 548 (1937).[1]

The critical question is what public entity actually created and empowered the Board. Respondents acknowledge that Virginia and the District authorized the establishment of a Board of Review (Resp. Br. at 31-32), yet make much of the fact that the Virginia and D.C. legislation did not spell out in detail the Board's composition and powers. *Id.* However, Virginia and the District quite properly delegated to the nonfederal Authority that they had created the responsibility to establish the Board and set forth its composition and powers in Bylaws promulgated pursuant to state law.[2] Those Bylaws require the Authority's Directors to establish a Board of Review and appoint thereto "representatives of the users of the Metropolitan Washington Airports who will serve in their individual capacities." Bylaws,

[1] There is no evidence, and respondents do not suggest, that undue congressional coercion existed here. *See infra* p. 6.

[2] Respondents also ignore critical state action in an area that Virginia and the District could not delegate—the state statutes expressly exempt *both* the Authority's Directors and Board of Review members from personal liability for actions taken in their official capacities. D.C. Law 7-32, § 3(b) (1987) (Pet. App. 142a); 1987 Va. Acts ch. 665, § 4 H (Pet. App. 110a). Respondents are simply incorrect when they state that the Transfer Act makes the Authority's Board of Directors but not the Board of Review liable for the Authority's actions. *See* Resp. Br. at 14.

art. IV, § 1 (Appendix to Petition for A Writ of Certiorari ("Pet. App.") 151a). The Bylaws prescribe how members will be selected from "a list or lists of recommended appointees" provided by the Speaker of the House and the President *pro tempore* of the Senate (*id.* at 152a); they also establish the powers of the Board of Review and prescribe what actions the Authority may pursue if a court were to declare the Board of Review invalid. *Id.* at 152a-154a.[3] Respondents fail even to mention these Bylaws in arguing that the Transfer Act and the Lease are "the ultimate 'but-for' causes of the establishment of the Board of Review." Resp. Br. at 31. Ultimately, without the voluntary actions of Virginia, the District and the nonfederal Authority, which adopted these Bylaws, there would be no Board of Review. *See* Brief for Petitioners ("Pet. Br.") at 17-19.

Because the Board of Review in fact was established, appointed and empowered pursuant to the laws of Virginia and the District, there is simply no basis for respondents' contention that it exercises "retained federal power." Resp. Br. at 32. States often accept conditions that originate in Congress, but this does not federalize the state action. It clearly was not Congress' intent, as expressed in the plain language of the Transfer Act (49

[3] Respondents suggest that the Transfer Act provision describing how the Lease should circumscribe the Authority's ability to initiate certain major actions if the Board of Review were held invalid (*see* 49 U.S.C. app. § 2456(f)) indicates impermissible congressional control over the local airports. Resp. Br. at 30. Respondents misconstrue the purpose and effect of § 2456(f), which simply makes clear how the Airports Authority is to function prospectively—and preserve the desired balance between local and user interests—if the Lease conditions (and provisions in the Bylaws) setting forth the Board of Review's composition and powers were invalidated. Congress should be commended for eliminating the need for this Court to undertake the "elusive inquiry" as to whether Congress intended its authorization for the remainder of the Lease provisions to stand or whether a workable administrative mechanism would remain if a particular provision were severed. *See INS v. Chadha*, 462 U.S. 919, 932, 934 (1983).

U.S.C. app. § 2456(a) and (b)(1) (1988)), to federalize any aspect of the Authority's governing structure. Nor was this the intent of the federal Executive or the legislative and executive branches of the governments of Virginia and the District, when they authorized the governing structure ultimately implemented by the Authority. *See* Lease, art. 11.A. (Pet. App. 171a); 1985 Va. Acts ch. 598, § 2 (Pet. App. 89a); D.C. Law 6-67, § 3 (1985) (Pet. App. 122a).

2. Contrary to respondents' contention that it is irrelevant whether the Board of Review exercises federal or state power (Resp. Br. at 29, 33), it is indeed significant that the Board of Review's powers are nonfederal. As a creature of state and local law (*see* Pet. Br. at 17-19; Brief for the United States ("U.S. Br.") at 21, 27-28), its actions, if any, affect only the nonfederal Authority's Board of Directors' state-derived powers with respect to the operations of two metropolitan airports. Thus, the Board of Review is without power to trench on the functions assigned to the federal Executive by the Constitution[4] and federal separation of powers concerns are not implicated by the Board's nonfederal activity whether characterized as executive or not. *See Kwai Chiu Yuen v. INS*, 406 F.2d 499, 501 (9th Cir.), *cert. denied*, 395 U.S. 908 (1969).

3. Respondents belabor the chronology and evolution of the Transfer Act in an attempt to show that what Congress in fact did was "camouflage" some underlying sinister intent. Resp. Br. at 2-13, 29. This history, however, more appropriately can be described as evidence of Con-

[4] There has been no allegation—nor could there be—that Congress impermissibly interfered with the federal Executive branch's responsibility to negotiate a Lease for the transfer of the two airports to the nonfederal Authority (*see* 49 U.S.C. app. § 2454(d) (1988)) or to perform such other duties with respect to these and other airports nationwide as authorized by federal statutes. The federal Executive retains unencumbered its powers with respect to airports generally.

gress' diligent effort, acting with full awareness of this Court's separation of powers decisions and even seeking the advice of the Executive branch (*see* Joint Appendix ("J.A.") 25-35), to choose a constitutionally appropriate way to balance local and airport user interests in solving a complex regional transportation issue.

Respondents ironically would have this Court ignore the plain language of the Act itself which was duly enacted in accordance with the Presentment and Bicameralism Clauses and makes clear that Review Board members are to serve in their individual not congressional capacities as representatives of the airport users. 49 U.S.C. app. § 2456(f)(1) (1988). Instead, respondents seek to divine from selected statements by individual Members in a late-night debate a furtive congressional intent to control the airports. Resp. Br. at 30-31. Faithful adherence to separation of powers principles would dictate a construction of the law as it was enacted and not as individual members might choose to portray it. *See Regan v. Wald*, 468 U.S. 222, 237 (1984); *see also Blanchard v. Bergeron*, 489 U.S. 87, 97-99 (1989) (Scalia, J., concurring). Moreover, this Court has long recognized that judicial inquiry into legislative motive is not appropriate. *See Aldridge v. Williams*, 44 U.S. (3 How.) 9, 24 (1845); *Wallace v. Jaffree*, 472 U.S. 38, 74 (1985) (O'Connor, J., concurring) ("a court has no license to psychoanalyze the legislators") (citation omitted).

When the rhetoric is brushed aside, the reality is that the interests that Congress sought to protect were airport user interests which Members as individuals understand by virtue of their frequent use of the airports. *See, e.g.*, Proposed Transfer of Metropolitan Washington Airports: Hearings on H.R. 2337, H.R. 5040 and S. 1017 before Subcomm. on Aviation of the House Comm. on Public Works and Transportation, 99th Cong., 2d Sess. 110 (1986) ("Members of Congress are heavy users of

the air transportation system. Your busy schedules include many trips back to your districts.") (statement of Secretary Dole). Members of the transportation-related committees are particularly knowledgeable and experienced in dealing with airport user concerns and thus were logical candidates to represent airport users. This unique user-representation can be readily distinguished from Congress' federal legislative role, which it has never relinquished, in overseeing airport safety, security, grants and air traffic control.

4. Notably absent from respondents' arguments is any suggestion that Virginia and the District were coerced or compelled to accept these airports. At most respondents suggest that Virginia found acceptance of the airports attractive because of the benefits that would accrue to the Commonwealth from capital improvements that the federal government simply was unwilling to make. Resp. Br. at 31.[5] Such improvements, however, were not guaranteed, and would depend on good management and substantial nonfederal financing. Contrary to respondents' contentions (*see* Resp. Br. at 2 & n.1), the airports are not profitmaking; airport revenues are to be expended only for capital and operating costs. 49 U.S.C. app. § 2454(c)(3)(1988); Lease, art. 11.C (Pet. App. 171a-172a). Moreover, the Authority, its operations and airport lands are all exempt from state and local taxes. 1985 Va. Acts ch. 598, § 21 (Pet. App. 103a-104a); D.C. Law 6-67, § 22 (1985) (Pet. App. 137a).

B. CONGRESS DOES NOT CONTROL THE BOARD OF REVIEW.

1. Contrary to respondents' bare assertions (*see* Resp. Br. at 34-35), Congress does not control the selection or removal of the members of the Board of Review. The

[5] Of course, even under federal ownership, Virginia already enjoyed many of the benefits that accrue to a state from the location of an airport within its boundaries. Such continuing benefits would not have been an inducement for accepting transfer of the airports.

Airports Authority appoints the members of the Board of Review. Lease, art. 13.A (Pet. App. 175a-176a); Bylaws, art. IV, § 1 (Pet. App. 151a-152a). Neither Congress' role in determining the 105 House members and 47 Senators who serve on the relevant transportation and appropriations committees from which the Airports Authority ultimately selects most of the Board of Review members nor the congressional leadership's submission of nominating lists to the Authority undermines this undisputed fact. That the Airports Authority makes its appointments from lists of nominees proposed by Congress does not vest the power of selection in Congress. *See Mistretta v. United States*, 488 U.S. 361, 410 n.31 (1989). Indeed, respondents point to no instances in which congressional limitations on the executive's power of appointment (as opposed to wholesale usurpation of that power by a coequal legislature) have been found to be unconstitutional.[6]

Respondents strain to distinguish the appointment procedure in this case from the procedures for appointing the Comptroller General and the members of the Sentencing Commission. Resp. Br. at 36-37. Respondents' effort fails, however, because they never address, much less dispute, the common theme in all these procedures: as long as the appointment process leaves room for the exercise of "judgment and will" by the appointing authority, such a process is constitutional. *See* 13 Op. Att'y Gen. 516 (1871). Similar to the President's role in appointing the Comptroller General or members of the Sentencing Commission, the Authority's Board of Directors

[6] In many instances Congress circumscribes the federal Executive's appointment power: by prescribing specific qualifications for appointment to federal office, *see, e.g.*, 28 U.S.C. § 45 (1988); by providing that appointments must be bipartisan, *see, e.g.*, 42 U.S.C. § 2996c(a) (1988); or by limiting the appointing authority to selection from a nominating list. *See, e.g.*, 42 U.S.C. § 10703 (1988); *see* Pet. Br. at 24. Such conditions are certainly no less constitutional when a nonfederal authority's appointment power is at issue.

exercises sufficient will and judgment in appointing the Board of Review members. The Authority has the discretion to ask for additional names should no names on the nominating lists be suitable. *See* J.A. 57. Moreover, the Airports Authority has exercised its discretion in selecting the Board of Review, initially appointing four members from a list of six House members and most recently choosing not to reappoint the President *pro tempore* of the Senate whose name was one of two submitted to the Authority. *See* J.A. 44-45; Minutes of MWAA Board of Directors Meeting of August 2, 1989.

2. The power to remove Board of Review members also rests with the Airports Authority and not Congress. Respondents have conceded as much (*see* Brief for Appellants (December 1, 1989) at 35 and Resp. Br. at 35) and cannot negate the longstanding precedent and state law that repose removal power in the appointing authority. *Ex Parte Hennen*, 38 U.S. (13 Pet.) 230, 259 (1839); *see* Pet. Br. at 26-27. Respondents belatedly suggest that Congress retains *de facto* removal power over the Board of Review by virtue of its ability to change Members' committee assignments. Resp. Br. at 35. This theory, never before argued, rests on certain "consist of" language in the Transfer Act that does not appear in the Lease, which was reviewed by Congress (*see* 49 U.S.C. app. § 2454(d) (1988)), or in the Bylaws, which govern the Authority.[7] But there is nothing magical about

[7] Respondents have not previously claimed that the Lease may be invalid to the extent that it differs from the Transfer Act. Such a claim would be difficult to sustain because the Act itself merely requires that the Lease contain certain minimum terms "consistent with" the Act. 49 U.S.C. app. §§ 2453(2), 2454(c)(11) (1988). The more precise requirement in the Lease and the Bylaws that the "Board of Directors shall appoint members from certain congressional committees (Lease, art. 13.A (Pet. App. 175a); Bylaws, art. IV, § 1 (Pet. App. 152a)) is not inconsistent with the ambiguous "consist of" language. In any event, Congress had the opportunity to review the Lease for a 30-day period before it became effective

the "consist of" language that suggests, much less mandates, that any change in the congressional committee status of a Board of Review member destroys that member's ability to finish his or her Board term. Indeed, the Transfer Act indicates that there is no necessary relationship between Board of Review membership and continued committee membership—the Act provides for six-year Board terms (*id.* at § 2456(e)(3)) even though House Members are elected to office for only two years. Where Congress has specifically intended an appointment of a Member of Congress to a board or commission to coincide with the Member's term of office, it has so provided in express terms. *See, e.g.*, 20 U.S.C. § 43 (1988) ("The Senators so appointed [to the Smithsonian Board of Regents] shall serve during the term for which they shall hold, without reelection, their office as Senators."); 40 U.S.C. § 176 (1988) ("The Speaker shall continue a member of the commission in control of [the House Office Building] until his successor as speaker is elected or his term as a Representative in Congress shall have expired.").

C. RESPONDENTS FAIL TO SHOW WHY CONGRESS COULD NOT ACHIEVE ITS OBJECTIVES FOR THE AIRPORTS THROUGH ITS PROPERTY CLAUSE POWERS.

1. Respondents concede that "a state's lawful enactment of a federally prescribed law may ordinarily eliminate objections to the federal requirement." Resp. Br. at 37-38. To this extent, respondents acknowledge this Court's rule that Congress, when acting under its Spending or Property Clause powers, may impose conditions on the states that cause the states to achieve objectives that

(*see* 49 U.S.C. app. § 2454(d)) and did not voice any concerns. Moreover, since the Transfer Act itself provides for the enforcement of the Lease, not the statutory, provisions (*id.* at § 2454(e)), the language of the Lease provisions should be dispositive, contrary to respondents' suggestion. Resp. Br. at 35 n.8.

Congress is unable to achieve directly. *South Dakota v. Dole*, 483 U.S. 203, 210 (1987). Nevertheless, respondents attempt to create an exception to this general rule when the separation of powers doctrine is implicated, arguing that unlike the federal Executive the states "have no institutional concern for safeguarding the federal doctrine of separation of powers." Resp. Br. at 38. But there is no basis for such an unusual exception, particularly here where the federal Executive negotiated the Lease incorporating the condition for the Board of Review and has consistently supported the constitutionality of that Board.

Respondents resort to a special exception argument because the condition here satisfies the principled limits that this Court has placed on Congress' powers under the Property or Spending Clauses. *South Dakota*, 483 U.S. 203. Under these principles, Congress may not encourage the states to undertake activities that the states are constitutionally barred from performing (*id.* at 210-11) and may not unduly coerce the states into accepting a condition. *Id.* at 211. Here, everyone agrees that the Constitution permits states and nonfederal entities to appoint Members of Congress to state or other nonfederal offices (Resp. Br. at 28; U.S. Br. at 21-23; Pet. Br. at 14-15), and there is no evidence or implication of coercion.

Contrary to respondents' protestations, applying *South Dakota* to this case would not open up a "massive loophole" (Resp. Br. at 39) for circumventing separation of powers constraints. *South Dakota* makes clear "that other constitutional provisions may provide an independent bar" to the federal legislation. 483 U.S. at 208. In this case, the state-authorized structure for establishing and appointing the Board of Review and the unique and limited local airport functions that it performs do not violate any provision of the Constitution. Nor should the constitutionality of this airports structure be held hostage to rampant speculation about other conceivable scenarios

all of which must be tested on their own facts against the principles of *South Dakota* and any independent constitutional provision.

D. RESPONDENTS FACE INSURMOUNTABLE BARRIERS TO STANDING.

1. Respondents challenge the Board of Review's disapproval power in a situation where the Board of Review has not exercised its disapproval power, much less exercised that power to respondents' detriment. Respondents claim that they are injured by the implementation of a Master Plan for National Airport that the Authority's Directors adopted, but there is no evidence whatsoever that any action of the Board of Review (or its mere existence) in any way affected that Plan, either before or after its submission to the Board of Review. Thus, respondents have not shown that invalidating the Board of Review would eliminate any cause of harm.[8]

Moreover, even assuming that the Board of Review affected the Master Plan, respondents have not shown that their alleged injuries are "fairly traceable" to the implementation of that Plan. Respondents repeatedly cite (Resp. Br. at 17, 20) the erroneous statement of the district court that increased noise, air pollution and safety problems "could *not* occur without the significant improvements contemplated by the Plan." Pet. App. 41a.

---

[8] Nor would respondents' alleged injuries be redressed by invalidating the Board of Review. In seeking to invalidate the Board, respondents hope to trigger the provisions of Article 13.H of the Lease and Article IV, § 9 of the Bylaws that would prevent the Authority from performing actions that must be submitted to the Board of Review. Respondents presumably rely on this circuitous route to reintroduce the issue of National Airport before Congress, even though it previously had rejected respondents' pleas. The irony is that eliminating the Authority's power to issue new regulations also would eliminate its power to take action that might benefit respondents. At most, the effect of invalidating the Board of Review on respondents' claims is far too speculative to support standing. *See Warth v. Seldin*, 422 U.S. 490, 507 (1975).

But the record and respondents' own statements clearly refute this illogical contention. The Master Plan is noise neutral. J.A. 74-75; J.A. 91.[9] Respondents also claim that the Authority cannot "dispute that the Master Plan is a necessary prerequisite for the projected increase in operations at National Airport." Resp. Br. at 21. The Authority can and does dispute exactly that. Respondents confuse the Master Plan itself with airport projections, which are an analytical tool independent of the Master Plan and show increasing passenger growth at National *with or without a master plan. See* J.A. 91. As the record shows, the Master Plan is designed to renovate and rehabilitate airport facilities, not expand capacity.[10]

Recognizing these problems, respondents nevertheless claim that "[p]arty litigants with sufficient concrete interests at stake may have standing to raise constitutional questions of separation of powers with respect to an agency designated to adjudicate their rights." *Buckley v. Valeo*, 424 U.S. 1, 117 (1976). But in contrast to the

---

[9] Respondents point out that some gates to be constructed under the Master Plan will accommodate certain widebody aircraft more easily. Resp. Br. at 21. But these widebody aircraft not only are quieter, they also hold more passengers and thus necessitate fewer flight operations, further reducing airport noise. Moreover, whether carriers acquire new aircraft that can meet the nighttime noise standard is completely independent of the Master Plan. *See id.* If some of the new aircraft are widebody, then the same number of passengers can be accommodated with fewer operations, again diminishing airport noise.

[10] Respondents concede that airport capacity is limited by statute. Resp. Br. at 21 n.6; 49 U.S.C. app. § 2458(e) (1988). Thus, even if the Master Plan facilitates more efficient use of the airport during periods of congestion, the statute still prevents additional aircraft operations. The few unused slots in nonpeak hours that respondents point to can be used any time there is market demand for them *with or without the Master Plan.* Respondents also contend that the addition of a taxiway turnoff will increase airport capacity. Resp. Br. at 21. Again, the taxiway will improve efficiency, but it cannot increase capacity which is limited by statute.

Federal Election Commission in *Buckley* that had authority to adjudicate plaintiffs' First Amendment right to make political campaign contributions, the Board of Review has no adjudicatory authority over any personal rights of respondents. Nor has the Board of Review exercised any power affecting the respondents. Since respondents have not even met the traditional threshold test of standing, which requires personal injury *fairly traceable* to the challenged action, *see Allen v. Wright*, 468 U.S. 737, 751, 756-59 (1984), they cannot raise a generalized separation of powers claim merely because the separation of powers doctrine ultimately secures individual rights. *Id.* at 756 n.21; *compare INS v. Chadha*, 462 U.S. at 935-36; *cf. Dennis v. Higgins*, 111 S. Ct. 865, 878 (1991) (Kennedy, J., dissenting). If respondents are allowed to challenge the Board of Review's mere existence (or failure to act in a way that they speculate may have helped them), then virtually anyone has standing to challenge the Board of Review.

2. The cases that respondents and the United States cite to establish that this case is ripe do not support that proposition here. Respondents point to *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678 (1987), for their claim that since *Chadha* this Court has not waited for a legislative veto to be exercised before reviewing its legality. However there, both parties conceded that the legislative veto at issue was unconstitutional. The sole question presented was a statutory one of severability. *See Alaska Airlines, Inc. v. Donovan*, 766 F.2d 1550, 1556 (D.C. Cir. 1985), *aff'd sub nom. Alaska Airlines, Inc. v. Brock, supra.* Moreover, that case involved a provision that subjected federal Executive action to congressional veto which, in light of *Chadha*, was plainly unconstitutional. Whether the governing structure of a nonfederal authority charged with local airports operations is subject to separation of powers constraints is a far different question, the resolu-

tion of which should await sufficient concreteness arising from the exercise of the Board's disapproval power.[11]

The United States tries to distinguish this case from *Clark v. Kimmitt*, 431 U.S. 950 (1977), in which this Court summarily affirmed a holding that a challenge to a one-house congressional veto provision was not ripe because the veto had not yet been exercised. *Clark v. Valeo*, 559 F.2d 642, 649 (D.C. Cir. 1977) (*en banc*). The United States finds it significant that the challenge to the legislative veto mechanism in *Clark* arose before Congress' allotted time for exercising its veto had expired, and Congress adjourned without acting. But the United States' claim here—that even when a disapproval power is not exercised the case is ripe—proves too much. If a case is ripe regardless whether the veto is exercised or not, then there is no point in waiting to see how that veto is exercised, as *Clark* suggests. The only answer can be that *Clark* stands for the proposition that if a veto (particularly one involving an issue of first impression) is not exercised, the case is not ripe. *See* 559 F.2d at 649.

---

[11] The one time the Board disapproved an action by the Authority demonstrates the value of a concrete factual context. *See* Resp. Br. at 23. In that instance the Board disapproved temporarily opening up the Dulles Access Highway to commuters because such action would be "contrary to the interests of the users of the airport." J.A. 83-84. In this specific context—the only time the Board had an acknowledged impact on airport decisionmaking—it is apparent that the Board members were faithful to their obligation under Article IV of the Bylaws to act as representatives of the airport users.

CONCLUSION

For the reasons stated above and in our opening brief, petitioners respectfully request that this Court reverse the decision below on the merits and uphold the constitutionality of the nonfederal Airports Authority including its Board of Review. In any event, the decision below should be reversed in view of respondents' lack of standing.

Respectfully submitted,

Of Counsel:
GREGORY WOLFE
EDWARD S. FAGGEN
METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
44 Canal Center Plaza
Alexandria, VA 22314
(703) 739-8740

Dated: April 8, 1991

WILLIAM T. COLEMAN, JR.
Counsel of Record
DONALD T. BLISS
DEBRA A. VALENTINE
NANCY E. MCFADDEN
O'MELVENY & MYERS
555 13th Street, N.W.
Suite 500 West
Washington, D.C. 20004
(202) 383-5325